

THERMAL POWER CO.

IBLA 79-504

Decided July 30, 1980

Appeal from decision of the Nevada State Office, Bureau of Land Management, subjecting noncompetitive geothermal resource lease N-24047 to wilderness protection stipulations.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Wilderness --
Geothermal Leases: Stipulations

Where the land embraced in a proposed geothermal lease has been identified as having wilderness characteristics and is being reviewed for possible preservation as wilderness pursuant to sec. 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), it is proper for the Bureau of Land Management to require the execution of special wilderness protection stipulations.

APPEARANCES: W. L. D'Olier, Vice President, Thermal Power Co., for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Thermal Power Company has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), requiring the company to execute special wilderness protection stipulations (WPS) in connection with the further processing of noncompetitive geothermal resource lease application N-24047.

BLM approved appellant's lease application but required appellant to execute the lease forms containing the following stipulations:

Until the BLM determines that the lands covered by this lease do not meet the criteria for a wilderness study area as set forth in section 603 or until Congress decides against the designation of lands included within this lease as wilderness, the lessee agrees not to occupy or use the surface of the leased lands for electrical power development or production purposes, except for certain limited uses, as indicated below. Excepted uses will include those exploration operations usually provided with a "Notice of Intent to Conduct Geothermal Resource Exploration Operations" (Form 3200-9), and, in certain instances, other exploration activities. Those operations would generally include geological mapping, geochemical studies, passive geophysical surveys, and the drilling of shallow temperature gradient holes. Drilling deep exploration wells may be permitted [sic] on a case-by-case determination by the Authorized Officer.

Any such operations are subject to regulations or, if necessary, disapproval until the final determination is made by Congress either to designate the lands as wilderness or remove the section 603 restrictions. Therefore, none of these operations may be conducted until approval has been obtained from either the Supervisor (under 30 CFR 270.78) or the BLM authorized officer (under 43 CFR 3209). The BLM authorized officer shall approve or recommend approval of such operations if he determines that the impact caused by the operations will not impair the suitability of the area for preservation as wilderness.

Appellant objects to the inclusion of this land in the wilderness inventory and seeks the removal of these stipulations stating:

The lands subject to the lease are within a Wilderness Inventory now being conducted by the BLM and are specifically within Inventory Unit NV-030-104 (Stillwater Range) recommended for intensive wilderness inventory. We believe that the lands included in the offered lease do not meet the requirements for such wilderness inventory, by reason of the existence or absence of the following features on or immediate to such lands:

- a) the existence of roads
- b) the existence of mining claims and mining operations
- c) the existence of patented lands
- d) the existence of man's imprint
- e) the absence of solitude
- f) the absence of outstanding opportunities for recreation

Section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976), provides for review by the Secretary of the Interior of certain areas of the public lands identified as having wilderness characteristics for possible designation by Congress as wilderness areas pursuant to the Wilderness Act of September 3, 1964, 16 U.S.C. § 1131 (1976). During the review period the lands shall be managed

in a manner so as not to impair * * * [their] suitability * * * for preservation as wilderness, subject, however, to the continuation of existing mining and grazing uses and mineral leasing in the manner and degree in which the same was being conducted on the date of approval of * * * [FLPMA]: Provided, that, in managing the public land the Secretary shall * * * take any action required to prevent unnecessary or undue degradation of the lands and their resources or to afford environmental protection.

43 U.S.C. § 1782(c) (1976).

The regulations at 43 CFR Subpart 3204 authorize BLM to require lessees to agree to such stipulations as are necessary for the protection of the lands. 43 CFR 3204.1. 43 CFR 3220.4 requires the notice of sale of competitive oil and gas leases to state the terms and conditions of the sale. These regulations and section 603 of FLPMA provide ample authority for BLM's decision to require the WPS on these leases. This Board has recently examined the use of this same type of wilderness protection stipulation for oil and gas leases. We have approved the use of comparable stipulations, noting that they provide means whereby oil and gas leasing activity on public lands can continue while the Department is carrying out the Congressional mandate to study and protect wilderness areas. Reserve Oil, Inc., 42 IBLA 190, 192 (1979). ^{1/} The same rationale holds true for the instant case. See also Solicitor's Opinion, 86 I.D. 89 (1976); Palmer Oil and Gas Co., 43 IBLA 115 (1979).

Accordingly, it was proper for BLM to require appellant to execute these stipulations. Appellant's arguments on appeal merely provide its views as to the use of these stipulations and are not persuasive that BLM has not carefully considered the implications of these restrictions or that this course of action is improper for the administration of this lease.

^{1/} Judge Stuebing remains personally persuaded that the position espoused in his dissenting opinion in Reserve Oil, Inc., *supra* at 196, is correct. He concurs with the majority here only by reason of his recognition of the binding effect of contrary Departmental precedent.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

